

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 Office of Property Valuation

4 (Amendment)

5 103 KAR 8:010. [~~Nonresident~~] Watercraft Allocation

6 RELATES TO: KRS 136.1801, 136.1802 [~~KRS 136.181, 136.162~~]

7 STATUTORY AUTHORITY: [~~KRS Chapter 13A~~]; KRS 131.130(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the  
9 Department of Revenue to promulgate administrative regulations necessary for the administration  
10 and enforcement of all tax laws in Kentucky. This administrative regulation addresses issues  
11 relating to apportioning the value of a taxpayer's watercraft to Kentucky. [~~requires information~~  
12 concerning mileage operated by nonresident watercraft for allocating mileage operated in  
13 Kentucky to total mileage.]

14 Section 1. Definitions. (1) "Corporation" has the same meaning as in KRS136.1801(1).

15 (2) "Watercraft" has the same meaning as in KRS 136.1801(2).

16 (3) "Department" shall mean Department of Revenue.

17 Section 2.[4] Apportionment. If the apportionment factor set forth in KRS 136.1802(4)  
18 does not fairly represent the extent of the corporation's watercraft activity in Kentucky, the  
19 corporation may petition for, or the Department may require, any other method to fairly represent  
20 an equitable apportionment of the corporation's watercraft to Kentucky. [Any

1 ~~nonresident owner or operator of watercraft, whose route or system is partly within this state and~~  
2 ~~partly within another state or states, shall report to the Revenue Cabinet by March 1 of each year~~  
3 ~~mileage operated in Kentucky and mileage operated out of state of each boat, tug, barge, and~~  
4 ~~other watercraft for the immediate preceding calendar year. For purposes of reporting mileage~~  
5 ~~operated, total mileage on the Ohio River and one half (1/2) the mileage on the Mississippi River~~  
6 ~~shall be considered as mileage within the state.]~~

APPROVED:



Thomas B. Miller, Commissioner  
Department of Revenue  
Finance and Administration Cabinet

5-10-2011

Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on July 28, 2011 from 10:00 a.m. to 12:00 p.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax).



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 103 KAR 8:010

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax).

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed amended regulation resolves issues regarding the regulation's authority and application to the taxation of commercial watercraft under the existing statutes. It further provides for a mechanism for commercial watercraft taxpayers to request relief from the possible unfair application of the undefined statutory term "route" in KRS 136.1802(4).

(b) The necessity of this administrative regulation: The existing regulation relates to statutes that were repealed effective January 1, 2008, and therefore, is not relevant to the current statutes, KRS 136.1801 and 136.1802. Further, the regulation provides guidance for taxpayers regarding the determination of the "route," an undefined statutory term in KRS 136.1802(4). As applied to some taxpayers, apportionment under KRS 136.1802(4) could be unfairly skewed towards the Commonwealth, increasing the tax burden on commercial watercraft with little contact with the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department of Revenue has general authority under KRS 131.130(1) to promulgate administrative regulations for the administration and enforcement of tax laws. This amended regulation will relate to watercraft assessment statutes currently applied.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This will assist in the uniform assessment of commercial watercraft.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See responses to (1) (a) and (1) (b).

(b) The necessity of the amendment to this regulation: See response to (1) (b).

(c) How the amendment conforms to the content of the authorizing statute: See (1) (c)

(d) How the amendment will assist in the effective administration of the statutes:

See (1) (d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 280 commercial watercraft entities, 40 counties, 54 schools districts, 49 cities, 40 fire districts. See attached spread sheet for greater detail.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Taxpayers will be required to

contact the DOR to request apportionment relief.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown, but should be no additional costs because taxpayers are currently filing returns.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? The regulation should provide taxpayers with greater administrative guidance regarding apportionment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional costs will be incurred.

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases in fees or funding is required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) No



## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No \_\_\_\_\_

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Both the state and all local taxing units as defined in KRS 136.1801(5).

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS131.130, KRS 136.1802(4), and United States Constitution, art. I, sec. 8, cl. 3 and U. S. Const. amend. XIV.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures are expected, no additional state revenues and local tax revenues are anticipated.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional state revenues and local tax revenues are anticipated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional state revenues and local tax revenues are anticipated.

(c) How much will it cost to administer this program for the first year? No additional costs are expected as opposed to previous year's costs.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected as opposed to previous year's costs.